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THE SITUATION IN CENTRAL AMERICA: PROCEDURES FOR THE ESTABLISHMENT OF A FIRM AND LASTING PEACE AND PROGRESS IN FASHIONING A REGION OF PEACE, FREEDOM, DEMOCRACY AND DEVELOPMENT

Note by the Secretary-General

1. The attached document contains the report of the Human Rights Area of the United Nations Verification Mission in Guatemala (MINUGUA) on the verification of compliance with the commitments of the Comprehensive Agreement on Human Rights. In accordance with the practice established since the Mission's inception, I shall convey a copy of this report to the United Nations High Commissioner for Human Rights, with the request that it be brought to the attention of the members of the United Nations Commission on Human Rights.

2. This report, which is being transmitted by the Head of the Mission, is the seventh on the subject, and covers the period from 1 January to 30 June 1997. During this period, the Mission continued to carry out its work normally and, as indicated in the report which I submitted to the General Assembly on 30 June 1997 (A/51/936), continued to verify compliance with the commitments of the Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements.

3. I wish to reiterate my thanks to the Government of Guatemala and to the Unidad Revolucionaria Nacional Guatemalteca (URNG) for their cooperation with the Mission, without which it would have been unable to function. I also wish to express my gratitude for the ongoing collaboration and support provided to the Mission by the bodies of the United Nations system in Guatemala, represented by the Resident Coordinator of Operational Activities for Development of the United Nations System.

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Annex

SEVENTH REPORT ON HUMAN RIGHTS OF THE UNITED NATIONS VERIFICATION MISSION IN GUATEMALA

I. INTRODUCTION

1. During the period covered by this report (1 January to 30 June 1997), the United Nations Verification Mission in Guatemala (MINUGUA) began to verify compliance with all the agreements included in the Agreement on a Firm and Lasting Peace (A/51/796-S/1997/114, annex II), and continued to verify compliance with the Comprehensive Agreement on Human Rights (hereinafter referred to as the "Comprehensive Agreement") signed on 29 March 1994 (A/48/928-S/1994/448, annex I) and with the human rights aspects of the Agreement on Identity and Rights of Indigenous Peoples (hereinafter referred to as the "Agreement on Indigenous Rights") signed on 31 March 1995 (A/49/882-S/1995/256, annex).

2. This report refers to the commitments of the Comprehensive Agreement which are not included in the Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements (A/51/796-S/1997/114, annex I), as noted in the report of the Secretary-General on the results of the verification of compliance with that Agreement (A/51/936, para. 5).

3. In the course of its verification functions, the Mission continued its contacts with each of the signatories. In particular, it maintained a close relationship with the Presidential Human Rights Commission (COPREDEH).

II. VERIFICATION OF RESPECT FOR HUMAN RIGHTS AND OF COMPLIANCE WITH OTHER COMMITMENTS MADE IN THE COMPREHENSIVE AGREEMENT

Commitment I. General commitment to human rights

4. In the Comprehensive Agreement, the parties mandated the Mission to receive, consider and follow up complaints regarding possible human rights violations and empowered it, inter alia, to collect relevant information, interview any person or group of persons freely and privately and visit government offices and Unidad Revolucionaria Nacional Guatemelteca (URNG) camps freely and without prior notice when this was deemed necessary.

5. The parties also made MINUGUA responsible for establishing whether the competent national institutions were carrying out the necessary investigations autonomously, effectively and in accordance with the Political Constitution and international human rights norms.

6. In addition, they gave MINUGUA the function of determining whether or not a violation of human rights had occurred on the basis of whatever information it might obtain in the exercise of its powers, taking into consideration any investigations that the competent constitutional institutions might carry out.

7. During the period under review, the Mission continued to act in strict accordance with this mandate and with the rules contained in the handbook on verification procedures, one of whose basic principles is the guarantee of confidentiality. Any person or organization that files a complaint with the Mission is entitled to request that personal data or any other information provided be kept secret. Without prejudice to this principle, MINUGUA explains the importance of approaching the competent State institutions to request investigation of the case, and encourages those who submit complaints to do so.

8. While the statistics contained in the appendix serve as a quantitative reference for the analysis of the human rights situation, the conclusions of these reports are also based on a qualitative analysis of the situation.

Analysis of verification of the rights accorded priority under the Comprehensive Agreement

9. During the period under review, the Mission admitted for verification a total of 182 complaints concerning 1,503 alleged violations. Thus, the number of complaints admitted continued to decline, as did the number of alleged violations to which they referred.

10. The decline is sharpest in relation to the right to life, to integrity and security of person and to individual liberty, and indicates, in the Mission's view, a decrease in the number of violations committed by State agents. This opinion is based on the conviction that, today, serious violations are very unlikely to go unreported to MINUGUA, since the Mission's presence for more than two years has won the confidence of the victims. Moreover, the Mission has not noted any increase in the fear of possible reprisals for filing complaints.

11. Most of the complaints admitted concern alleged violations of the right to due process (40.11 per cent). About 80 per cent of these alleged violations concern either the State's legal duty to investigate and punish violations or the obstruction of justice.

12. According to the verification, particularly of the right to life, not all of the cases reported involve acts committed directly by State agents in the exercise of their functions. Rather, many refer to situations in which the State failed in its duty to provide guarantees. This duty is impaired when institutions fail to comply with their legal obligation to provide, in a timely manner, for appropriate means of guaranteeing full respect for human rights or of carrying out prompt, exhaustive and effective investigations when such rights are violated.

13. The duty to provide guarantees is not one of abstention, as in the case of the prohibition against the violation of individual rights, but one of action. It involves organizing the State machinery so as to enable it to ensure the full enjoyment or exercise of human rights. This is a legal requirement with which the State is gradually and progressively improving its compliance.

14. It is therefore important to take note of advances such as the establishment of the Commission on the Strengthening of the Justice System and

the steps taken towards the creation and deployment of the new National Civil Police (see A/51/936, paras. 40-49).

15. In relation to the right to life, the Mission admitted 44 complaints (24.18 per cent). There was a significant decrease in the number which attributed the violation to direct action by State agents. The largest number of complaints referred to extrajudicial executions or deaths in violation of legal guarantees (23), followed by death threats (15) and attempted extrajudicial executions (6).

16. Since a given complaint may allege the existence of one or more violations, the total number of reported violations of the right to life was 65. During the period under review, 60 violations were found to have occurred. Of the 19 attributed to extrajudicial executions or deaths in violation of legal guarantees, 16 took place in 1996 and 3 during the current period.

17. In the verified cases in which State agents were directly implicated, the alleged responsibility lies with agents of the National Police or members of the armed forces for abuse of power or excessive use of force in the pursuit of suspects, or for taking advantage of their position for personal motives.

18. The Mission also followed up cases of serious violations of the right to life of alleged criminals, which, it has been suggested, could represent a pattern of "social cleansing", since the killings in question resembled extrajudicial executions or occurred under circumstances which could point to planned and coordinated actions carried out according to a pre-established modus operandi. Despite these follow-up efforts, it has not yet been possible to collect all of the information needed to determine whether State agents were involved.

19. According to the complaints, death threats continue to be made against human rights activists, politicians, prosecutors and social leaders. Even though such threats do not necessarily come from State agents, their explicit relation to the victims' activities and the fear they produce seriously hamper the victims' exercise of their functions. This is clearly exemplified by the case of the prosecutor investigating the Xamán incident and by the cases of several other departmental prosecutors.

20. The overall declining trend was also reflected in the number of complaints of violations of the right to integrity and security of person, of which the Mission admitted 33 (18.1 per cent). They reported 686 alleged violations, most of which were found to have occurred.

21. With respect to new cases of torture, nine alleged violations were reported to MINUGUA, which confirmed one of them. It also confirmed the existence of this violation in six of the eight complaints of cruel, inhuman or degrading treatment. The remaining complaints are still being verified.

22. Regarding the 508 alleged violations involving the excessive use of force, all were found to have occurred. Most of them took place during the apprehension of criminals, an area in which the complaints received represent

only a small percentage of actual cases. However, the persistent decline in the number of complaints seems to indicate that some overall progress has been made.

23. The fact that all these violations could be confirmed during the period under review was due not to a reversal of the positive trend towards moderation among the National Police, but rather to the concentration of violations in one exceptional and alarming case. On 5 June, in San Pedro Saquetepéquez, San Marcos, a large-scale police operation was carried out to search business premises for contraband. This operation was marked by the excessive number of police officers involved, the abuse of authority and the lack of proportion between the aim of the operation and the degree of force used.

24. With respect to violations of this right in the form of acts of intimidation other than death threats, 143 complaints of alleged violations were admitted during the period under review, 24 of which were found to have occurred.

25. During the six months covered by the report, 27 complaints (14.84 per cent) were admitted concerning the right to individual liberty; this is an appreciable decline, particularly as regards arbitrary detention or violation of legal guarantees.

26. The complaints, for the most part, blame members of the National Police. In some cases it is claimed that irregularities are hidden by the police who doctor reports, making it appear that an offence is more serious than it is, deliberately commit errors when recording the facts or even deny that anyone is being detained.

27. During the period covered by the report, MINUGUA admitted three complaints of enforced disappearances; it established that a violation had occurred in respect of one complaint admitted during the previous period and that no violation had occurred in respect of one complaint admitted during this period; the other two complaints are being verified.

28. The most serious of these complaints - which send a disturbing signal concerning the positive perception that was noted in the previous report (A/51/790, para.19) - relates to the so called "Mincho case". On 20 May 1997, the Mission confirmed, in a press release, that Juan José Cabrera Rodas had been a member of the Organización Revolucionaria del Pueblo en Armas (ORPA) and had gone by the name "Mincho" or "Bejamín". It also confirmed that Cabrera Rodas had been involved, together with Rafael Augusto Baldizón Núñez, known as "Commander Isaías", in the kidnapping of Olga Alvaredo de Novella (ibid., para. 63). During the verification, evidence was obtained which suggested that the two had been captured, but Cabrera Rodas' whereabouts are not yet known.

29. After 20 May, the verification turned up further evidence to suggest that the Presidential staff had carried out the anti-kidnapping operation and that they might have exceeded their functions and overstepped the boundary of what is permissible under the rule of law.

30. The investigation carried out by the Public Prosecutor's Office has not made any further headway to date. Although the latter has not done all that it is empowered to do, it did take the basic steps necessary to collect the facts and did so in a timely manner. Nevertheless, during the period under review, it has not received due cooperation from the Executive. The very day the Mission issued its press release and based on the information contained therein, the Attorney General requested information from the President of the Republic, the Presidential Chief of Staff, the Minister of Defence, the Minister of the Interior and the Director of the National Police regarding the alleged disappearance of Cabrera Rodas. In their replies the State authorities sidestepped the specific questions on the case or said that they knew about it only from the media.

31. In order to make progress in the clarification of the case it is essential for the Public Prosecutor's Office to exercise its investigative powers to the full. The Government has repeatedly stated that it wants the case to be resolved and that it is ready to cooperate extensively to that end. Nonetheless, if that readiness is to be translated into action, there must be a change in the Government's attitude; as a first step it should make known the names of the agents who participated in the operation. For its part MINUGUA, in fulfilment of its mandate and in the exercise of its responsibilities, will continue with the verification of the complaint, will establish whether the Public Prosecutor's Office is conducting the necessary investigations independently, effectively and in accordance with the Constitution and international norms concerning human rights, and will offer that institution all possible assistance.

32. During the period under review, 73 complaints (40.1 per cent) were admitted, concerning 447 allegations of violations of the right to due legal process, and 170 violations were confirmed. The complaints admitted reveal a large drop compared to the previous six-month period. It should be noted that most of the violations reported (273) relate to the legal duty of the State to prevent, investigate and punish, and account for some 25 per cent of the total number of complaints concerning the series of rights accorded priority.

33. Although the number of admitted complaints relating to that right has also dropped significantly, this fact should not necessarily be taken to mean that there has been progress in observance of that right. Unlike the situation with the other rights accorded priority, in regard to this one the Mission, in practice, receives complaints on only a small percentage of all the offences committed in the country.

34. Verification confirms that, as a rule, the violations observed in respect of that legal duty are characterized, inter alia by the following: (a) failure by agents of the Public Prosecutor's Office to take steps which are essential if the investigations are to advance, or delay in doing so; (b) lack of impetus of the proceedings, which is characteristic of the courts, and the time it takes to pronounce judgement, even in cases where the evidence has been gathered promptly, a suspect has been captured or eyewitnesses are available; (c) the inability of the State to operate the witness protection programme when eyewitnesses in serious cases report that they have been subjected to threats or intimidation; (d) continuing lack of coordination between the National Police

and the Public Prosecutor's Office, which is detrimental to judicial investigations; and (e) the failure by the National Police to carry out an arrest warrant.

35. Verification has also confirmed the existence of grave deficiencies in the implementation, by other State organs, of the generic obligation to cooperate with the courts and to refrain from obstructing the investigation or the course of proceedings.

36. A typical case is that of Cándido Noriega Estrada who was accused of committing 156 offences between 1982 and 1983, when he was exercising the functions of military commissioner and chief of the Civilian Self-Defence Patrols of Chinique, El Quiché. During the trail there were grave violations of due process and clear institutional deficiencies which can be said to have resulted in denial of justice to the victims. Noriega was acquitted of all charges against him, which were characterized as murder, kidnapping, rape, aggravated robbery, aggravated theft, arson, threats, injury, illegal detention, assault and illegal entry. The violations of due process included: the fact that the judge appointed to hear the case was the person who had conducted the initial investigation; serious problems regarding interpretation of the language, which affected the 37 witnesses for the Public Prosecutor's Office, all of whom were indigenous people; psychological coercion against the witnesses for the party bringing the charges; discriminatory methodology used for according probative value to testimony, depending on whether or not it was given by indigenous people. The first-mentioned irregularity prompted the Supreme Court, which had appointed the said judge to hear the case, to subsequently remove him.

37. The Mission continued the verification of due process in the proceedings of investigations into illegal burials. There have been cases - for example Cuarto Pueblo, Ixcán, in Quiché department and Rabinal in Baja Verapaz department - where, although clandestine cemeteries were uncovered, and the respective legal proceedings instituted more than three years ago, to date no progress has been made. Despite the scepticism of relatives, the new political context has renewed hopes that these cases may be tried and judicially resolved.

38. Verification of due process also covers observance of procedural guarantees when individuals are brought to trial. Despite the recorded decrease in the number of complaints, analysis of these complaints shows that there continue to be violations of certain procedural guarantees, particularly of the right to be tried within a reasonable period of time. MINUGUA found that, on the whole, trials take longer than they are supposed to under the law.

39. There are also numerous cases where the right to have a suitable interpreter has been affected because of the shortage of translators, which seriously limits the access of vast sectors of the indigenous population to the administration of justice; the same is true of the right to defence, since there continue to be not enough lawyers compared to the number of persons being tried.

40. During the period covered by this report the Mission did not receive any further complaints regarding political rights.

41. With regard to the right to freedom of expression, the Mission received complaints of acts of intimidation directed at reporters; these remain in the pre-verification stage, since there is insufficient information about the persons making the complaints.

42. MINUGUA is carefully verifying the complaint regarding physical aggression by two armed individuals against Óscar Granados Ara, president of the Unión de Cronistas Parlamentarios and founder of the Unidad de Prensa, an entity that coordinates 13 press associations. The individuals expressed animosity towards reporters and left a threatening message at the victim's home.

43. During the period under review, although the Mission did not receive any complaints about violation of the right to freedom of movement and residence, it found that the exercise of these freedoms had been jeopardized in some cases relating to freedom of association or assembly.

44. The Mission admitted five complaints, concerning 225 violations of freedom of association and assembly. Verification revealed that, in one case, individuals who were members of the Ixcán Grande cooperative were harrassed for political reasons, and that the State failed in its duty to guarantee respect for such freedoms. Another grave complaint concerns the exercise of freedom of association and trade union rights by municipal employees in Zacapa.

Commitment II. Commitment to strengthening institutions for the protection of human rights

45. In the Comprehensive Agreement the Government reiterated its willingness to respect the autonomy and protect the freedom of action of the judiciary and the Public Prosecutor's Office in the face of pressure, whatever its kind or origin. MINUGUA believes that even though there have been instances in which some agents of the Executive have impeded the action of these agencies, and even though the latter still do not have adequate resources, the Government has fulfilled this commitment. The verification reveals the development of the strengthening of the judiciary and of the Public Prosecutor's Office.

46. With regard to the judiciary, it is worth noting: (a) the completion of the work on the preliminary bill on a career judicial service; (b) the progressive increase in the number of courts within the capital and outside; and (c) the decision by the Supreme Court to raise the salaries of judges and magistrates.

47. At the same time, it is disturbing to find that in order to fill the judgeships in the new courts, the Supreme Court has reinstated, albeit as a transitory measure, the system of appointing judges without having candidates take competitive examinations, and be evaluated at the Judicial Training School.

48. During the period under review the Public Defender's Office has grown stronger as demonstrated by: (a) the speed with which the public defenders have filed applications and the fact that they have intervened in more discussions than any body of lawyers in the country; (b) the institutions of a competitive examination for hiring new staff; and (c) the establishment of a pilot Unit for

Minors which will play an important role in the implementation of the Children's Code.

49. The Public Prosecutor's Office is pursing an institutional policy designed to promote growth and rational development of the institution, with a view to increasing its technical and administrative capacity. The aim is to increase its efficiency in the investigation of crime and to increase its presence in and proximity to the rural population and marginal areas.

50. The Public Prosecutor's Office approved the holding of a competitive examination for all prosecutors currently employed at that institution. However, it amended its regulations so as to enable any persons who did not take - or who did not pass - the exam to continue carrying out their functions, but without being part of the career service. This double standard has created confusion regarding the real extent of the implementation of the career service in respect of prosecutors.

51. In addition, the Public Prosecutor's Office has yet to adopt a final decision regarding a proper system for monitoring the activities of prosecuting agents and assistants, although the need for such a system has been made clear by the fact that, in some cases, those officials have failed to carry out some of their duties.

52. With regard to the Office of the Counsel for Human Rights, the Comprehensive Agreement commits the Government to continue supporting its strengthening. Whereas the Counsel for Human Rights requested a budget of 37 million quetzales for 1997, the proposal which the Ministry of Finance submitted to Congress reduced the amount to 21.5 million; the budget finally approved was the same as in 1996, namely, 19.5 million quetzales. The Mission believes that this is not enough to enable the Counsel for Human Rights to carry out his mandate efficiently, particularly when one takes into account the need to establish new departmental offices and to maintain some in precarious situations, to strengthen the independent capacity to investigate complaints of human rights violations and to carry out the role of monitoring observance of the right to justice and due process.

53. One indicator of the critical financial situation in which the departmental auxiliary offices of the Counsel for Human Rights find themselves, was the fact that several such offices in regions of great social conflict, such as Cantabal, temporarily suspended their activities. This all serves to underscore the importance of compliance with the commitment to strengthen the Office of the Counsel for Human Rights, which is planned for the second phase of the implementation, compliance and verification timetable for the Peace Agreements.

54. The Mission continued to support the strengthening of the Office of the Counsel for Human Rights by providing continuing technical advice, and it began to verify with particular care the commitment regarding improving the technical and material conditions available to the Counsel for Human Rights in carrying out his tasks (A/51/796-S/1997/114, Annex I, para. 73).

Commitment III. Commitment against impunity

55. Even before the armed conflict came to an end, it was clear, as a consequence of the peace process, that there had been a qualitative change in the human rights situation. Increasingly, the violations resulted less from the actions of the active participants in the conflict than from the persisting structural defects in the criminal investigation system and the administration of justice. This trend became more marked after the peace was signed. In the period under review, most of the violations were not the acts of members of URNG or of the Army or people linked with the Army, but of officials of the National Police, the Public Prosecutor's Office and the judiciary whose actions or failure to act affect the legal duty of the State to investigate and punish, and seriously impair the above-mentioned commitment.

56. Most of the unlawful acts committed in the country, whether human rights violations or ordinary crimes, still go unpunished by the law. It is an illusion to think that crime can be eliminated so long as the perpetrators, accomplices and accessories go unpunished for their unlawful acts or when the courts are bringing to trial only the actual participants in organized crime and have no effect on their higher-level ring leaders.

57. During this period, although the Army collaborated in ensuring public security pursuant to Decree No. 90-96, that did not alter the high incidence of ordinary crimes reported previously, especially kidnappings.

58. The scant progress made in bringing people to trial for serious violations, (the cases of Xamán, Mack, Carpio, Sas Rompiche and others) demonstrates that impunity continues to be the practice. The processing of cases is still extremely slow, and not only in the cases cited. A clear example was recourse to the remedy of amparo as a delaying tactic in the Xamán case where the practice reached new heights. During the period under review, accused persons invoked that remedy 15 times, thereby delaying oral proceedings. Moreover, the cooperation of the Army with the courts in cases where the criminal responsibility of Army personnel is under investigation remains inadequate. There are still situations indicating that the institutional support of the Army goes beyond simply a legal defence, as in the case of the former member of the Presidential Staff who killed Pedro Haroldo Sas Rompiche in February 1996 and is still an officer in the Army today.

59. Nor have the courts issued legal rulings bringing to trial high-level Army officers who may be involved in violations committed by their subordinates or were accessories to those violations.

60. In those situations, the official policy of the Army is to attempt to limit its responsibility and to refrain from actively collaborating in the clarification and punishment, arguing that that is exclusively the business of the courts.

61. The impunity phenomenon goes beyond the framework of the courts in scope and complexity and is becoming a factor influencing both individual and group behaviour, thus undermining the rule of law to a degree proportionate to the absence of the State in the region concerned.

62. One form of behaviour noted during this period is the lynchings of presumed perpetrators of minor crimes leading to their deaths. It should be noted that from time to time the authorities, particularly the National Police, have tried to prevent such actions. However, in most cases, they obviously were unwilling to subject the guilty parties to criminal prosecution. When such condemnable acts are committed, any chance of applying the rules of due process is ruled out. This practice of "taking justice into your own hands" reflects a serious deficiency in the rule of law, both at the level of the collective legal conscience and of the objective capacity of the guardian institutions of the State responsible for public security and the administration of justice.

63. During the period under review, the Mission received a complaint claiming that in submitting the draft National Reconciliation Act to Congress, the Government violated Commitment III of the Comprehensive Agreement not to support the adoption of legislative or other measures aimed at preventing the prosecution and punishment of those guilty of human rights violations.

64. After examining the arguments in the complaint, the Mission concluded that there had been no violation in view of the following facts:

(a) The Act was introduced by the Government and approved by the Congress of the Republic with the intention of complying with a commitment established in the Agreement on the Basis for the Legal Integration of URNG. There was no restriction on the ability of the parties to enter into or amend agreements in any negotiating process, provided they respected the domestic laws and the international commitments made by the State, particularly in matters affecting human rights.

(b) In international human rights law, which is valid and now in force in Guatemala, there is no rule that establishes a general and standing obligation to punish as a crime those who violate those human rights; nor is there any provision that prohibits the adoption, regardless of the circumstances, of measures such as amnesty and pardon. From that point of view, no human rights treaty ratified by the State of Guatemala was violated by the Government in introducing the National Reconciliation Act.

(c) Nor has the action taken by the Government nullified Commitment III of the Comprehensive Agreement since it is in force at the present time and after adoption of the National Reconciliation Act, any move by the Government to support the adoption of measures contrary to that Act would violate the Agreement.

65. Prior to receipt of that complaint, the Mission had given careful study to the Act and it was its considered view that the Act was sufficiently exceptional and restrictive in applicability to make it compatible with action to combat impunity and respect for the right of victims to the truth and compensation. That judgement was based on the following considerations: (a) that discharge from criminal liability referred only to a few crimes provided that they met specific requirements (arts. 1 to 7) and provided that they were not subject to the exclusions established in the text (art. 8); (b) its provisions are not automatically applicable and there is a benefit granted after judicial proceedings with the participation of the aggrieved persons or their family

members, in which the perpetrator must acknowledge his guilt and prove that his request for that benefit is in keeping with the assumptions allowed by law; and (c) the exclusion of the civil suit from the scope of the Reconciliation Act and the provisions governing the right to the truth and compensation protect the fundamental rights of the victims.

66. Although those restrictions might imply that strict application of the Act ought to rule out the above-mentioned benefit in the case of the most serious violations of human rights, the Mission nevertheless verified the application of due process of law in the approximately 50 cases to date in which a request was made for discharge of criminal liability for the alleged perpetrators. The verification showed that thus far the courts have applied the Act correctly by excluding from that benefit situations unrelated to the armed conflict as well as petitions for amnesty for perpetrators of ordinary crimes or crimes not expressly envisaged in the Act. The Mission will continue to verify future cases with special care in order to be sure that judges continue to apply the Act with strict regard for its spirit and limitations.

Commitment IV. Commitment that there are no illegal security forces and clandestine structures; commitment to continue with the purification and professionalization of the security forces; regulation of the bearing of arms

67. The Mission found cases where, as part of the campaign against organized crime, forces made up of members of the President's General Staff, exceeding their legal authority and functions and using irregular methods, participated in anti-kidnapping operations with the acquiescence of high-level authorities of the Government.

68. The methods used, apart from violating due process, may be counterproductive to the objectives of the Government's fight against impunity in that, owing to the illegality of the arrests, the trials could be declared null and void on procedural grounds.

69. On the other hand, MINUGUA appreciates the efficiency with which the Government has terminated the process of demobilization and legally disbanded the Voluntary Civil Defence Committees, which were notable for taking over functions that legitimately belonged to the security forces. Moreover, the Army, as an institution, has not introduced policies aimed at restoring its earlier relationship with those Committees.

70. However, after following up the reports issued during the month of May on the reorganization of the civilian patrols in Chichicastenango, El Quiché, the Mission was able to confirm that they continued to exercise tight control in operations bordering on the normal functions of a security force, which can be explained by the half-heartedness of the State in complying with the related commitment.

71. At the same time, the Mission noted conflicting views in the government departments concerning forming new watchdog groups. A group of residents from the town of Pamesebal I, Santa Cruz del Quiché, requested permission to form a night patrol made up of people armed with machetes and blunt instruments. The

Legal Adviser of the Directorate of the National Police recommended that it should not be granted because "it might affect the treaties recently signed between the Government and URNG". The Departmental Chief of the Quiché National Police, on the other hand, recommended that it should be granted "because it is impossible to send units to that community for purposes of surveillance", and that it "is too remote". That was also the opinion of the Headquarters of the Joint Operations Center of the National Police. In the end, on 11 April, the Legal Adviser of the Ministry of the Interior issued Opinion No. 410-97 in which he recommends granting the request "on the basis of subparagraph (ñ) of article 10 of the National Civil Police Act", which lists as one of its functions "to promote the sharing or responsibility and participation of the population in fighting crime". However, it should be noted that Article 1 of the same Act (Decree No. 11-97) says that "The Public Security is an essential service to be provided exclusively by the State and to that end, the National Civil Police is hereby established".

72. Lastly, without prejudice to the commitment of the Government to encourage the reform of the Arms and Munitions Act (A/51/796-S/1997/114, Annex I, para. 130), the illegal proliferation of firearms among private individuals during the period under review continues to be a problem that affects the crime rate and weakens control over the possession and bearing of arms called for in the legislation in force. Statistics show more deaths from firearms than from such steel instruments as knives.

Commitment VII. Commitment to safeguard and protect individuals and entities working for the protection of human rights

73. The Government assumed a commitment to take special measures to protect individuals or entities working for the protection of human rights, promptly and exhaustively to investigate their complaints about acts or threats directed against them and to guarantee and effectively protect their activities.

74. During the period under review, the Mission admitted a small number of complaints about alleged violations committed against human rights activists. Generally speaking, it may be said that those individuals and entities are continuing their work in the normal way, despite the fact that there is still a latent fear that surfaces whenever there is another scare.

III. VERIFICATION OF RESPECT FOR THE RIGHTS OF INDIGENOUS PEOPLES

75. The cases of violations of the rights of the indigenous population, as a display of discrimination verified during this period, concerned the right to have translators in their languages in court and respect for the world view of the Maya culture as a guarantee of due process taking into account ethnic, cultural and multilingual diversity. MINUGUA verified that there are still discriminatory conceptions, attitudes and behaviour with respect to that population which call for more intensive efforts to publicize the Peace Agreements, particularly the one concerning the rights of indigenous peoples.

76. A good example of that situation is the suit filed against Candido Noreiga Estrada (para. 36) where verification found infringements of the principles of

fairness, immediacy, independence and impartiality, especially in the case of indigenous persons, mainly monolingual women.

77. In addition, the Mission found that indigenous persons in authority or in public office were finding it difficult to perform their functions when the latter were related to the work of other authorities or their supervision. A case in point are the obstacles to allocating resources and the unjustified opposition to executing some projects.

78. With regard to the numerous lynchings occurring during this period (para. 62), the indigenous organizations have rejected the association made in certain quarters between the lynchings and traditional indigenous justice. For its part, the Mission considers that the process now under way of granting legal recognition to the traditional, indigenous institutions ought to help resolve the dispute.

79. In connection with the assassination of the leaders of the Unión del Pueblo Maya de Guatemala, Tomás Alonzo Sequen y Roque Jacinto Sequen Quisque, which caused a riot among the indigenous population, verification indicates that due process is being applied, two individuals having been detained and charged, but no charges have been brought as of now of the direct or indirect involvement of officials or agents of the State.

IV. CONCLUSIONS

80. The steady drop in the number of violations by public officials of those human rights that the Comprehensive Agreement considers to be of prime importance represents significant progress in the implementation of the general commitment regarding human rights.

81. In general, the Government has fulfilled its commitment to respect the autonomy and safeguard the freedom of action of the judiciary and the Public Prosecutor's Office, which in the period under review showed a moderate tendency to become stronger.

82. Except in isolated situations, two of the factors responsible for impunity referred to already in the Mission's first report - the Armed Forces' autonomy in carrying out counter-insurgency operations and the military commissioners' and Voluntary Civil Defence Committees' control over rural communities - are gradually losing their influence as a result of the cessation of the armed conflict; this represents significant progress. The Mission considers it extremely important that, simultaneously, civil institutions be strengthened, so that they can ensure that the rule of law is definitively established.

83. However, verification has revealed that disturbing factors persist, such as the great number of alleged violations for which public officials have been identified as being responsible and, in particular, the fact that most unlawful acts go unpunished.

84. This situation is attributable to the failure on the part of State organs to fulfil their obligation to provide safeguards, especially with respect to the

obligation to prevent, investigate and punish. This has meant that there has been little progress with regard to observance of the principle of due process, and there has been a negative impact on the commitment to take action against impunity.

85. Unlawful participation in anti-kidnapping operations on the part of institutions with no authority to engage in them - even though it may take place within the framework of efforts to counter organized crime - constitutes a serious violation of the commitment that there are no illegal security forces.

86. In view of the importance of definitively eradicating the practice of enforced disappearances in Guatemala, the Government's failure to cooperate in clarifying the "Mincho case" is a matter of concern.

87. Respect for procedural guarantees for individuals on trial remains erratic; this situation applies particularly with regard to the right to defence, the right to be tried within a reasonable time and the right to be assisted by a suitable interpreter.

88. With regard to indigenous peoples, the Mission has noted that discriminatory situations persist, particularly in connection with effective access for such peoples to the justice system and the safeguarding of due process.

89. Nevertheless, in circumstances such as those experienced by Guatemala and in view of the resulting institutional weakness, the extent to which it is possible to require fulfilment of the obligation to provide safeguards depends on such factors as political will, which must be forthcoming immediately, and institutional capability, achievement of which is necessarily gradual. The Mission believes that, as a result of fulfilment of the commitments entered into in a number of agreements, which are in keeping with the recommendations made by MINUGUA, a certain amount of progress is beginning to be made, such as the establishment of the Commission on the Strengthening of the Justice System and the initial steps taken towards setting up and deploying the new National Civil Police.

Appendix

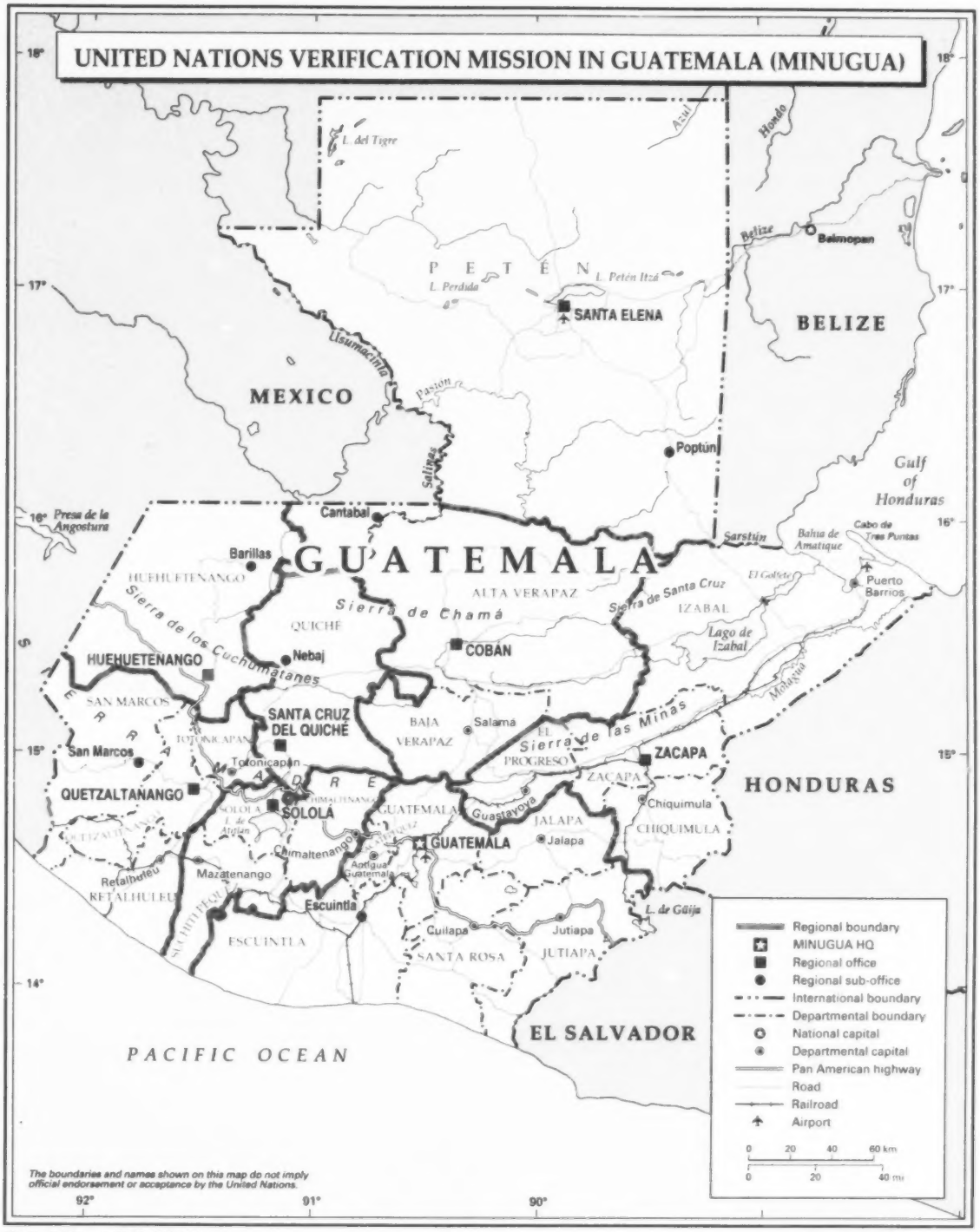
Statistics on human rights violations during the period from 1 January to 30 June 1997

	Complaints admitted	Violations alleged	Violations verified*	Violations confirmed
Right to life				
Extrajudicial executions or deaths in violation of legal guarantees	23	30	43	19
Attempted extrajudicial executions	6	9	36	12
Death threats	15	26	79	29
Total	44	65	158	60
Right to integrity and security of person				
Torture	2	9	1	1
Cruel, inhuman or degrading treatment	8	13	11	6
Ill-treatment	9	19	29	20
Excessive use of force	3	502	508	508
Other threats	11	143	48	24
Total	33	686	597	559
Right to individual liberty				
Arbitrary detention	17	40	53	44
Detention in violation of legal guarantees	6	34	33	29
Kidnapping	1	1	16	6
Hostage-taking	-	-	2	2
Enforced disappearance	3	4	2	1
Forcible, unjust or discriminatory recruitment	-	-	4	4
Total	27	79	110	86

	Complaints admitted	Violations alleged	Violations verified*	Violations confirmed
Right to due process				
Right to be presumed innocent	2	4	4	4
Right to be judged by a competent, independent and impartial judge	1	38	2	2
Right to be tried within a reasonable time	4	7	10	10
Right to defence and to be assisted by a lawyer	3	11	13	13
Right to be assisted by an interpreter	2	3	5	4
Right not to be compelled to testify against oneself	-	-	-	-
Right of appeal	-	-	-	-
Right of habeas corpus	-	-	-	-
Right of access to the justice system	7	9	6	6
Obstruction of the work of the National Police, the Public Prosecutor's Office and the judiciary	9	101	18	17
Legal duty of the State to investigate and punish	45	273	133	113
Right to compensation	-	-	300	-
Legal guarantees for the victim	-	1	1	1
Total	73	447	482	170
Political rights				
Right to have access to public service	-	1	1	1
Right to be registered on the electoral roll	-	-	-	-
Right to vote	-	-	-	-
Right to hold political office	-	-	-	-
Total	-	1	1	1
Right to freedom of expression	-	-	1	-

	Complaints admitted	Violations alleged	Violations verified*	Violations confirmed
Right to freedom of association and assembly				
Right to freedom of association	2	182	12	7
Right to organize	1	40	4	3
Freedom of assembly	2	3	5	3
Total	5	226	21	13
Right to freedom of movement and residence				
Deprivation of documents	-	-	-	-
Enforced population displacement	-	-	-	-
Freedom of movement	-	-	3	1
Total	-	-	3	1
Grand total	182	1 503	1 383	890

* Violations verified include cases admitted in earlier periods.



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